

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**ATLANTA & WEST POINT RAIL ROAD COMPANY
THE WESTERN RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated and continues to violate the current Agreement between the parties, effective May 1, 1942, revised September 1, 1949, when it issued Bulletin No. 52-35 on July 16, 1952, in the office of Auditor of Disbursements, Atlanta, Georgia allegedly abolishing position of Payroll Clerk and transferring the eight hours clerical work assigned thereto to an "excepted" position of Special Accountant and transferred the "excepted" duties of the latter position to an alleged newly created position of Additions and Betterments Clerk, and

2. That the status quo ante be restored by reestablishing the position of Payroll Clerk and former incumbent, Mrs. R. A. Jenkins, be reassigned thereto and, as a penalty, for a violation of the Agreement, she be compensated a day's pay at the pro rata rate of \$321.46, plus increases, per month for each day she is withheld from her regular assignment, and

3. All other employees affected be transferred back to their former positions and compensated for all losses sustained until such time as the status quo ante is restored.

EMPLOYEES' STATEMENT OF FACTS: On January 1, 1951, Carrier issued Bulletin No. 51-3 in Seniority District 1, Class 1, Office of Auditor of Disbursements, Atlanta, Georgia, advertising a "new excepted (b)" position as follows:

(Employees' Exhibit "A")

"TO ALL EMPLOYEES CONCERNED:

"(1) Effective January 16, 1951, position of Printing Foreman is changed from 'Excepted (b)' to non-excepted position.

(h) Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the pay or rendering these rules inapplicable.

(i) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rate while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

There was no violation of this rule. No rates of pay previously in effect were changed, the change of duties of Special Accountant carried with it the same salary as had been applicable heretofore.

The net effect of Bulletin No. 52-35 was to increase the salaries of the office as a whole by the amount of \$50.00, this brought about by our abolishing the position of Payroll Clerk at \$321.46 and creating a position of Additions and Betterments Clerk at \$371.46.

Boiled down there were only three people affected, C. H. Stephens, R. W. Williams and Mrs. R. A. Jenkins. Mr. Williams was moved from Accountant at \$346.34 to excepted position of Special Accountant at \$371.46. Mr. Stephens moved from Special Accountant to newly created position of A&B Clerk at the same money he was making as Special Accountant. Mrs. Jenkins was Payroll Clerk at \$321.46. Her job was abolished and she bid in job vacated by Mr. Williams at \$346.34. Mrs. Jenkins was the only employee in the office who could possibly have been adversely affected, but through the exercise of seniority she was enabled to claim a position paying \$24.88 more per month than she received on the abolished position. To restore all positions to the status quo ante would reduce Mrs. Jenkins' salary by \$24.88 and abolish position of Additions and Betterments Clerk with a resultant reduction in salary of Mr. Williams by \$25.12.

To sum up, we again request the claim be dismissed account non-compliance with the provisions of the Railway Labor Act, or if you retain jurisdiction, that it be declined for the reasons outlined.

To the extent possible all data contained herein has been made available to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: In its office of Auditor of Disbursements in Atlanta, prior to July 15, 1951, the Carrier maintained three positions entitled and occupied as follows: Special Accountant (excepted)—incumbent C. H. Stephens; Payroll Clerk—incumbent Mrs. R. A. Jenkins (claimant) and Accountant—incumbent R. W. Williams. By Bulletin dated July 16, 1952 the position of Payroll Clerk was abolished and the work formerly performed on that position was assigned to the position of Special Accountant, a new position of Additions and Betterments Clerk was created with much the same duties as the former position of Special Accountant and the position of Accountant was retained. The incumbents of the former position were then reassigned as follows: Special Accountant—R. W. Williams, Additions and Betterment Clerk—C. H. Stephens and Accountant—Mrs. R. A. Jenkins. The position of Special Accountant is excepted from the provisions of Rule 5 (b) (Promotion) and Rule 14 (Reduction in Force, Abolishing Positions and Increasing Force).

We find no merit in the Carrier's contention to the effect that this Board should not accept jurisdiction because allegedly the claim was not handled in the usual manner up to and including the Chief Operating Officer designated to handle such disputes. It is apparent that protest was initially made to the Auditor and the essence of the claim, to wit: the action of the Carrier which the employees alleged to be a violation of the Agreement was fully

discussed with that official who denied the protest. Upon appeal to the Director of Personnel the statement of claim was clarified and formalized. As so made it was declined by the Director of Personnel. Obviously it would have been a vain act to re-discuss the claim with the Auditor after that declination. The Director of Personnel by unequivocally denying the claim should be deemed to have waived any further conference below.

It is axiomatic that work of a non-excepted position cannot be transferred to an excepted position except by agreement. In transferring the work of the Payroll Clerk's position to the excepted position of Special Accountant without negotiation with the employees, the Carrier violated the Agreement. Carrier was within its rights in transferring work of the Special Accountant's position to the non-excepted position of Additions and Betterments Clerk. Such a transfer of work would, of course, make it a part of the duties of a non-excepted position and all the rules of the Agreement would thereupon attach to it. The net result of the Carrier's action herein, was, therefore, to make all the work of the three existing positions subject to all of the rules of the Agreement. Since work is the essence of a position, the position of Special Accountant as now constituted cannot rightfully be considered as an excepted position.

It follows from what we have indicated above that Item (1) of this claim should be sustained. With respect to Items (2) and (3) the penalty requested is not justified by the nature of the violation. No work was removed from the scope of the Agreement. The substance of the violation was the failure of the Carrier to make the position of Special Accountant subject to the provisions of Rules 5 (b) and 14. The claim should therefore be sustained on behalf of the senior qualified employee, under the Agreement, who was deprived of the right to promotion to that position by reason of the assignment of Mr. R. W. Williams thereto and that employee should be compensated for the difference between his earnings from July 16, 1952 and the earnings of the position of Special Accountant until the violation herein found is corrected.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement as indicated in the Opinion.

AWARD

Claim (1) sustained; claims (2) and (3) disposed of as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of October, 1954.